IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.242 OF 2004

Sayajirao Ganpati Desai ...Petitioner

Versus

Mrs.Anuradha Sayajirao Desai & Anr. ...Respondents

ALONG WITH

CRIMINAL APPLICATION NO.443 OF 2005

Mrs.Anuradha Sayajirao Desai ...Applicant

Versus

Shri Sayajirao Ganapati Desai

& Anr. ...Respondents

.....

Mr.A.M.Kulkarni for Petitioner in Writ Petition/ Respondent No.1 in Application.

Mr.Uday Warunjikar for Respondent No.1 in Writ Petition/Applicant in Application.

Mr.A.S.Gadkari, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

FEBRUARY 24, 2005.

P.C.

1. Heard Counsel for the parties.

2. This Petition takes exception to the order passed by the 2nd Ad-hoc Additional Sessions Judge, Kolhapur dated 4th January 2004 in Criminal Misc.Application No.74 of 2003. By that order, the Revisional Court has rejected the prayer for condoning delay in filing Revision, which was to the extent of 461 days. Briefly stated, the Respondent No.1 filed Application under Section 125 of the Criminal Procedure Code, 1973 against the Petitioner. The Trial Court has recorded in its order dated 7th September 2001 that the Petitioner is avoiding service of summons, for which reason, case was ordered to proceed ex-parte. Thereafter, the Trial Court proceeded with the hearing of the Application and eventually, by order dated 13th February 2002, allowed Application preferred by Respondent No.1 by directing the Petitioner to pay monthly maintenance amount to the Respondent No.1 in the sum of Rs.1,500/- (Rupees One Thousand Five Hundred) with effect from 1st February 2002 and further amount of Rs.1,000/- (Rupees One Thousand) towards cost of the proceedings.

3. Against that decision, the Petitioner preferred Revision Application on 4th August 2003 which is after 461 days. The Petitioner filed Application for condonation of delay. All that has been mentioned in the delay application is that the Petitioner did not receive notice of the proceedings pending before the Magistrate. This contention can be discerned from Paragraphs 3 and 4 of the Application at Page 21. The Revisional Court considered that aspect and proceeded to hold that the cause shown by the Petitioner is not sufficient cause. The Court has observed that intimation was given to the Petitioner on 7.7.2001, 9.7.2001, 10.7.2001, 11.7.2001, 12.7.2001 and 13.7.2001 as is seen from the record. The envelope sent by R.P.A.D. to the Petitioner, however, was eventually returned with endorsement "Unclaimed". It is on that basis, the Trial Court has observed in its order dated 7th September 2001 that the Petitioner was avoiding service of notice. Moreover, it is seen that in the Application for condoning delay in filing Revision as filed,

nowhere it is mentioned as to when the Petitioner became aware about the order passed by the Magistrate, except, vaguely stating that on receipt of summons regarding execution proceedings, the Petitioner became aware about the said order. The date on which that summons was served on the Petitioner has not been mentioned at all.

4. Viewed in this perspective, no fault can be found with the conclusion reached by the Revisional Court that no sufficient cause is made out in condoning the delay in filing the Revision Application. If it is so, the Application has been rightly rejected by the lower Court.

5. The argument that the Petitioner has good case on merits, makes no difference to the question as to whether the delay as explained, ought to be condoned. As no sufficient cause has been made out and there is no denial of the position appearing from the record that intimation was given to the Petitioner on his known address on more than one date, no fault can be found with the Court below for having proceeded ex-parte against the

Petitioner. It needs to be observed that in fact, the order of the Trial Court to proceed against the Petitioner ex-parte, dated 7th September 2001, has not been challenged by the Petitioner before this Court or for that matter, before the lower Court. Hence, dismissed.

6. In view of the order passed in the Writ Petition, no orders are required on Criminal Application No.443 of 2005. The same is also disposed of by this order.

7. All concerned to act on an ordinary copy of this order, duly authenticated by the Office.

A.M.KHANWILKAR, J.